

AMENDED IN SENATE APRIL 14, 2009

SENATE BILL

No. 404

Introduced by Senator Benoit

February 26, 2009

An act to amend Section ~~511~~ 226 of the Labor Code, *and to amend Section 19853 of the Revenue and Taxation Code*, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 404, as amended, Benoit. ~~Alternative workweek~~ *Employment: information for employees.*

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment. Under existing law, an employer is also required, in connection with the annual wage statement, to notify all of its employees that they may be eligible for the earned income tax credit (EITC).

This bill would clarify that the employer may provide the wage information either on a detachable part of the payment made to the employee or on a separate page and would specify that the employer is not required to include the hours worked by employees who are exempt from certain overtime requirements. The bill would limit the EITC notification, requiring the employer to notify only those employees to whom it pays a gross annual salary of \$50,000 or less.

~~Existing law requires that an alternative workweek schedule proposed by an employer may be adopted through a $\frac{2}{3}$ majority vote of the employees in a secret ballot. It also requires, among other things, that an employer report to the Division of Labor Statistics and Research~~

within the Department of Industrial Relations the results of an election to establish an alternative workweek within 30 days of the election.

~~This bill would change the time limit for an employer to report the results of an alternative workweek election to an indeterminate number of days following the election.~~

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 226 of the Labor Code is amended to
2 read:

3 226. (a) Every employer shall, semimonthly or at the time of
4 each payment of wages, furnish each of his or her employees,
5 either as a detachable part of the check, draft, or voucher paying
6 the employee's wages, ~~or separately when wages are paid by~~
7 ~~personal check or cash on a separate page~~, an accurate itemized
8 statement in writing showing ~~(1) gross the following:~~

9 (1) Gross wages earned, ~~(2) total.~~

10 (2) Total hours worked by the employee, except for any
11 ~~employee whose compensation is solely based on a salary and who~~
12 is exempt from payment of overtime under subdivision (a) of
13 Section 515 or any applicable order of the Industrial Welfare
14 Commission, ~~(3) the.~~

15 (3) The number of piece-rate units earned and any applicable
16 piece rate if the employee is paid on a piece-rate basis, ~~(4) all.~~

17 (4) All deductions, provided that all deductions made on written
18 orders of the employee may be aggregated and shown as one item;
19 ~~(5) net.~~

20 (5) Net wages earned, ~~(6) the.~~

21 (6) The inclusive dates of the period for which the employee is
22 paid, ~~(7) the.~~

23 (7) The name of the employee and ~~his or her social security~~
24 ~~number, except that by January 1, 2008, only the last four digits~~
25 of his or her social security number or an employee identification
26 number other than a social security number ~~may be shown on the~~
27 ~~itemized statement, (8) the.~~

28 (8) The name and address of the legal entity that is the employer;
29 ~~and (9) all.~~

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to ~~any~~ *an* employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of

1 four thousand dollars (\$4,000), and is entitled to an award of costs
2 and reasonable attorney's fees.

3 (f) A failure by an employer to permit a current or former
4 employee to inspect or copy records within the time set forth in
5 subdivision (c) entitles the current or former employee or the Labor
6 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
7 penalty from the employer.

8 (g) An employee may also bring an action for injunctive relief
9 to ensure compliance with this section, and is entitled to an award
10 of costs and reasonable attorney's fees.

11 (h) This section does not apply to the state, to any city, county,
12 city and county, district, or to any other governmental entity, except
13 that if the state or a city, county, city and county, district, or other
14 governmental entity furnishes its employees with a check, draft,
15 or voucher paying the employee's wages, the state or a city, county,
16 city and county, district, or other governmental entity shall, ~~by~~
17 ~~January 1, 2008,~~ use no more than the last four digits of the
18 employee's social security number or shall use an employee
19 identification number other than the social security number on the
20 itemized statement provided with the check, draft, or voucher.

21 *SEC. 2. Section 19853 of the Revenue and Taxation Code is*
22 *amended to read:*

23 19853. (a) An employer shall notify all employees *to whom*
24 *the employer pays a gross annual salary of fifty thousand dollars*
25 *(\$50,000) or less* that they may be eligible for the EITC within
26 one week before or after, or at the same time, that the employer
27 provides an annual wage summary, including, but not limited to,
28 a Form W-2 or a Form 1099, to any employee.

29 (b) The employer shall provide the notification required by
30 subdivision (a) by handing directly to the employee or mailing to
31 the employee's last known address either of the following:

32 (1) Instructions on how to obtain any notices available from the
33 Internal Revenue Service for this purpose, including, but not
34 limited to, the IRS Notice 797 and Form W-5, or any successor
35 notice or form.

36 (2) Any notice created by the employer, as long as it contains
37 substantially the same language as the notice described in
38 paragraph (1) or in ~~subdivision (a)~~ of Section 19854.

39 (c) The employer shall not satisfy the notification required by
40 subdivision (a) by posting a notice on an employee bulletin board

1 or sending it through office mail. However, these methods of
2 notification are encouraged to help inform all employees of the
3 EITC.

4 (d) Every employer shall process, in accordance with federal
5 law, Form W-5 for advance payments of the EITC, upon the
6 request of the employee.

7 ~~SECTION 1. Section 511 of the Labor Code is amended to~~
8 ~~read:~~

9 ~~511. (a) Upon the proposal of an employer, the employees of~~
10 ~~an employer may adopt a regularly scheduled alternative workweek~~
11 ~~that authorizes work by the affected employees for no longer than~~
12 ~~10 hours per day within a 40-hour workweek without the payment~~
13 ~~to the affected employees of an overtime rate of compensation~~
14 ~~pursuant to this section. A proposal to adopt an alternative~~
15 ~~workweek schedule shall be deemed adopted only if it receives~~
16 ~~approval in a secret ballot election by at least two-thirds of affected~~
17 ~~employees in a work unit. The regularly scheduled alternative~~
18 ~~workweek proposed by an employer for adoption by employees~~
19 ~~may be a single work schedule that would become the standard~~
20 ~~schedule for workers in the work unit, or a menu of work schedule~~
21 ~~options, from which each employee in the unit would be entitled~~
22 ~~to choose.~~

23 ~~(b) An affected employee working longer than eight hours, but~~
24 ~~not more than 12 hours in a day, under an alternative workweek~~
25 ~~schedule adopted pursuant to this section, shall be paid an overtime~~
26 ~~rate of compensation of no less than one and one-half times the~~
27 ~~regular rate of pay of the employee for any work in excess of the~~
28 ~~regularly scheduled hours established by the alternative workweek~~
29 ~~agreement and for any work in excess of 40 hours per week. An~~
30 ~~overtime rate of compensation of no less than two times the regular~~
31 ~~rate of pay of the employee shall be paid for work in excess of 12~~
32 ~~hours per day and work in excess of eight hours on those days~~
33 ~~worked beyond the regularly scheduled workdays established by~~
34 ~~the alternative workweek agreement. This section does not require~~
35 ~~an employer to combine more than one rate of overtime~~
36 ~~compensation in order to calculate the amount to be paid to an~~
37 ~~employee for overtime work.~~

38 ~~(c) An employer shall not reduce an employee's regular rate of~~
39 ~~hourly pay as a result of the adoption, repeal or nullification of an~~
40 ~~alternative workweek schedule.~~

~~(d) An employer shall make a reasonable effort to find a work schedule not to exceed eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule hours established as the result of that election. An employer shall be permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election. An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.~~

~~(e) The results of any election conducted pursuant to this section shall be reported by an employer to the Division of Labor Statistics and Research within ____ days after the results are final.~~

~~(f) A type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees pursuant to this section. An alternative workweek schedule that was adopted pursuant to Wage Order Number 1, 4, 5, 7, or 9 of the Industrial Welfare Commission is null and void, except for an alternative workweek providing for a regular schedule of no more than 10 hours' work in a workday that was adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to wage orders of the Industrial Welfare Commission in effect prior to 1998. This subdivision does not apply to exemptions authorized pursuant to Section 515.~~

~~(g) Notwithstanding subdivision (f), an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage Orders 4 and 5 in effect prior to 1998 that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation shall be valid until July 1, 2000. An employer in the health care industry shall make a reasonable effort to accommodate an employee in the health care industry who is unable to work the alternative schedule established as the result of a valid election held in accordance with provisions of Wage Order 4 or 5 that were in effect prior to 1998.~~

1 ~~(h) Notwithstanding subdivision (f), if an employee is~~
2 ~~voluntarily working an alternative workweek schedule providing~~
3 ~~for a regular work schedule of no more than 10 hours of work in~~
4 ~~a workday as of July 1, 1999, an employee may continue to work~~
5 ~~that alternative workweek schedule without the entitlement of the~~
6 ~~payment of daily overtime compensation for the hours provided~~
7 ~~in that schedule if the employer approves a written request of the~~
8 ~~employee to work that schedule.~~

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